

## **POOR LEGIBILITY**

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DUE TO THE QUALITY OF THE ORIGINAL

In the matter of: )  
J.H. Baxter & Company, Roseburg )  
Forest Products Co., International )  
Paper, and Beazer East Inc., on )  
behalf of the American Lumber & )  
Treating Company Interests )

# ADMINISTRATIVE CONSENT ORDER

Proceeding Under Section 122(h)(1)  
of the Comprehensive Environmental  
Response, Compensation and Liability)  
Act of 1980 (42 U.S.C. §9622(h)(1))  
as amended by the Superfund  
Amendments and Reauthorization  
Act of 1986

Docket No. 93-25

1 This Order is issued by the United States Environmental  
2 Protection Agency ("EPA") and is agreed to by the Respondents  
3 captioned above. The purpose of this Order is for EPA to recover  
4 response costs incurred by the United States at or in connection  
5 with the J.H. Baxter Superfund Site in Weed, California and to  
6 resolve the liability of the Respondents for such response costs.

7 EPA is authorized to enter into this Order pursuant to the  
8 authority vested in the Administrator of the EPA by Section  
9 122(h)(1) of the Comprehensive Environmental Response,  
10 Compensation, and Liability Act of 1980, as amended by the  
11 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.  
12 99-499 ("CERCLA"), which authority has been delegated to the  
13 Regional Administrators of the EPA by EPA Delegation No. 14-14-D  
14 (Sept. 13, 1987), and redelegated to the Director, Hazardous  
15 Waste Management Division, EPA Region IX.

16 WHEREAS, EPA alleges that hazardous substances as defined by  
17 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at  
18 the Site and that such hazardous substances have been or are  
19 threatened to be released into the environment from the Site;

20 WHEREAS, EPA alleges that the Site is a "facility" as  
21 defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

22 WHEREAS, EPA alleges that such releases or threatened  
23 releases required response action to be undertaken at the Site  
24 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will  
25 require further response action to be undertaken in the future;

26 WHEREAS, EPA alleges that in performing this response  
27 action, it has incurred response costs at or in connection with  
28 the Site totalling \$2,790,497.00 as of October 31, 1992;

1 WHEREAS, EPA alleges that as of June 15, 1993 it was  
2 entitled to interest in the amount of \$176,402.00 on response  
3 costs incurred prior to October 31, 1992;

4 WHEREAS, Respondents have previously submitted payment of  
5 \$420,000 in partial satisfaction of EPA's claims for response  
6 costs;

7 WHEREAS, EPA alleges that the Respondents are responsible  
8 parties pursuant to Section 107(a) of CERCLA, 42 U.S.C.  
9 § 9607(a), and are jointly and severally liable for response  
10 costs incurred and to be incurred at or in connection with the  
11 Site;

12 WHEREAS, for purposes of this Order Respondents do not admit  
13 any of the allegations set forth above;

14 WHEREAS, EPA represents that the Attorney General or her  
15 designee has issued prior written approval of the settlement  
16 embodied in this Order pursuant to Section 122(h)(1) of CERCLA,  
17 42 U.S.C. § 9622(h)(1); and

18 WHEREAS, EPA and the Respondents desire to settle certain  
19 claims arising from the Respondents' alleged involvement with the  
20 Site without litigation and without the admission or adjudication  
21 of any issue of fact or law;

22 NOW, THEREFORE, in consideration of the promises herein, and  
23 intending to be legally bound hereby, it is ordered and agreed as  
24 follows:

25 1. DEFINITIONS: Unless otherwise expressly provided  
26 herein, terms used in this Consent Order which are defined in  
27 CERCLA or in regulations promulgated under CERCLA shall have the  
28 meaning assigned to them in CERCLA or in such regulations.

1 Whenever terms listed below are used in this Consent Order the  
2 following definitions shall apply:

3 a. "ALTC Interests" shall mean, soley for the purposes of  
4 this Order, the American Lumber & Treating Company, Beazer  
5 East, Inc., Aluminum Company of America (ALCOA), Chicago  
6 Bridge & Iron, Co., whichever person(s) or entity(ies)  
7 is(are) judicially determined to liable for said Interests.

8 b. "CERCLA" shall mean the Comprehensive Environmental  
9 Response, Compensation, and Liability Act of 1980, as  
10 amended, 42 U.S.C. §§ 9601 et seq.

11 c. "Day" shall mean a calendar day. In computing any  
12 period of time under this Consent Order where the last day  
13 would fall on a Saturday, Sunday, or Federal Holiday, the  
14 period shall run until the close of business of the next  
15 working day.

16 d. "EPA" shall mean the United States Environmental  
17 Protection Agency and any successor departments or agencies  
18 of the United States.

19 e. "Parties" shall mean the United States and each and  
20 every Respondent.

21 f. "Past Response Costs" shall mean all costs, including  
22 but not limited to direct and indirect costs, that EPA, the  
23 U.S. Department of Justice or any agency or entity on behalf  
24 of EPA has incurred in connection with the Site through  
25 October, 31, 1992.

26 g. "Respondents" shall mean J.H. Baxter & Co., International  
27 Paper, Roseburg Forest Products Co., and Beazer East, Inc.  
28 on behalf of the ALTC Interests.

g. "Section" shall mean a portion of this Consent Order identified by an arabic numeral and/or a lower case letter.

h. "Site" or "the J.H. Baxter Superfund Site" shall mean the J.H. Baxter property located at 422 Mill Street, portions of the Roseburg Forest Products property, located at 98 Mill Street, Weed, California, and the areal extent of contamination.

i. "United States" shall mean the EPA and the U.S. Department of Justice (DOJ), and any other United States department, or agency or instrumentality acting on behalf of the EPA with respect to the Site.

2. This Order shall be binding upon EPA and shall be binding upon the Respondents and their successors and assigns. Each signatory to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to bind legally the party represented by him or her. The Respondents agree to undertake all actions required by this Order. The Respondents consent to the issuance of this Order and will not contest EPA's authority to enter into this Order or to implement or enforce its terms, subject to any defenses available to Respondents under this Order.

3. The Respondents agree to pay to the Hazardous Substance Superfund \$2,324,381.10, according to the schedule set forth in Appendix A of this Order. The Respondents agree to pay interest on all amounts outstanding after the date of the First Payment set forth in Appendix A. Interest shall be calculated at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98

1 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. §  
2 9607(a). Upon request by Respondent, EPA will timely provide a  
3 calculation of interest being charged, and the interest rate  
4 being used for such calculation, for any time period covered by  
5 Appendix A of this Order.

6 4. The Respondents' payments shall be made by certified or  
7 cashier's check made payable to "EPA-Hazardous Substance  
8 Superfund." The checks shall reference the name and address of  
9 the Respondents, the site name and identification number, and the  
10 EPA docket number for this action and shall be sent by the  
11 Respondents to:

12 EPA Region IX  
13 ATTN: Superfund Accounting  
14 P.O. Box 360863M  
Pittsburgh, PA 15251

15 5. The Respondents shall simultaneously send a copy of the  
16 checks to:

17 Kathy Setian  
18 Mail Code H-6-3  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

19 6. In addition to any other remedies or sanctions available  
20 to EPA, any Respondent who fails or refuses to comply with any  
21 term or condition of this Order shall be subject to enforcement  
22 action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C.  
23 § 9622(h)(3), and to civil penalties pursuant to Sections 122(l)  
24 and 109 of CERCLA, 42 U.S.C. §§ 9622(l) and 9609.

25 7. Subject to Section 8 of this Order, upon full payment of  
26 the amount specified in Section 3 of this Order, EPA agrees that  
27 the Respondents shall have resolved any and all civil liability  
28 to EPA under Section 107(a) of CERCLA, 42 U.S.C. section 9607(a),

1 for reimbursement of EPA Past Response Costs.

2 8. Nothing in this Order is intended to be nor shall it be  
3 construed as a release, covenant not to sue, or compromise of any  
4 claim or cause of action, administrative or judicial, civil or  
5 criminal, past or future, in law or in equity, which EPA may have  
6 against the Respondents for:

7 a) any liability as a result of failure to make the  
8 payments required by Section 3 and Appendix A of this  
9 Order or other failure to comply with terms of this  
10 Order; or

11 b) any liability not expressly included in Section 7  
12 above, including, without limitation any liability for  
13 i) injunctive relief at the Site; ii) response costs  
14 other than those specifically described under Sections  
15 3 and 7 above; iii) damages for injury to or loss or  
16 destruction of natural resources; or iv) criminal  
17 liability.

18 9. Nothing in this Order and attached payment schedule  
19 (Appendix A) constitutes or shall be interpreted or construed as  
20 a) an admission by Respondents that EPA is entitled to  
21 any of the remedies set forth in the preceding Section;  
22 or  
23 b) an admission by any Respondent of any liability  
24 under any federal, state, or local law, or of any  
25 understanding or agreement among Respondents as to  
26 their potential joint liability, their potential  
27 liability or their proportionate share of any potential  
28 liability with respect to the Site.



1        10. Nothing in this Order is intended to be nor shall it be  
2 construed as a release, covenant not to sue, or compromise of any  
3 claim or cause of action, administrative or judicial, civil or  
4 criminal, past or future, in law or in equity, which EPA or  
5 Respondents may have against any person, firm, corporation or  
6 other entity not a signatory to this Order.

7        11. The Respondents agree not to assert any claims or  
8 causes of action against the United States or the Hazardous  
9 Substance Superfund arising out of response activities undertaken  
10 at, or relating to, the Site prior to October 31, 1992, or to  
11 seek any other costs, damages, or attorney's fees from the United  
12 States, its agencies, employees or contractors arising out of  
13 response activities undertaken at, or relating to, the Site prior  
14 to October 31, 1992.

15        12. With regard to claims for contribution against the  
16 Respondents for matters addressed in this Order, the parties  
17 hereto agree that the Respondents are entitled, as of the  
18 effective date of this Order, to such protection from  
19 contribution actions or claims as is provided in Section  
20 122(h)(4) of CERCLA, provided that the foregoing shall not apply  
21 to claims between Beazer East, Inc., ALCOA and Chicago Bridge &  
22 Iron, Co.

23        13. This Order shall be subject to a thirty-day public  
24 comment period pursuant to Section 122(i) of CERCLA. In  
25 accordance with Section 122(i)(3) of CERCLA, EPA may withdraw its  
26 consent to this Order if comments received disclose facts or  
27 considerations which indicate that this Order is inappropriate,  
28 improper or inadequate, in which case EPA shall timely notify

1 Respondents. Upon receipt of such notification of EPA's  
2 withdrawal of its consent, Respondents shall be released from all  
3 obligations required under this Order.

4 14. The effective date of this Order shall be the date upon  
5 which EPA issues written notice to the Respondents that the  
6 public comment period pursuant to Section 13 of this Order has  
7 closed and that comments received, if any, do not require EPA  
8 withdrawal from this Order.

9 15. This Consent Order may be executed and delivered in any  
10 number of counterparts, each of which when executed and delivered  
11 shall be deemed to be an original, but such counterparts shall  
12 together constitute one and the same document.

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1 IT IS SO AGREED:

2 J.H. Baxter & Co.,

3  
4 By: \_\_\_\_\_

5 Its: \_\_\_\_\_

\_\_\_\_\_ Date

6  
7 International Paper, Inc.

8  
9 By: \_\_\_\_\_

10 Its: \_\_\_\_\_

\_\_\_\_\_ Date

11  
12 Roseburg Forest Products, Co.

13  
14 By: \_\_\_\_\_

15 Its: \_\_\_\_\_

\_\_\_\_\_ Date

16  
17 Beazer East, Inc. on behalf of  
18 the ALTC Interests

19 By: \_\_\_\_\_

20 Its: \_\_\_\_\_

\_\_\_\_\_ Date

21 The above being agreed and consented to, IT IS SO ORDERED  
22 this 30<sup>th</sup> day of September, 1993.

23  
24 U.S. Environmental Protection Agency

25 By: 

26 Jeff Zelikson, Director  
27 Hazardous Waste Management Division  
28 Region IX

1 IT IS SO AGREED:

2 J.H. Baxter & Co.,

3  
4 By:

William T. Hassler

October 15, 1993

5 Its:

William T. Hassler  
Attorney

Date

6  
7 International Paper, Inc.

8  
9 By:

10 Its:

Date

11  
12 Roseburg Forest Products, Co.

13  
14 By:

15 Its:

Date

16  
17 Beazer East, Inc. on behalf of  
18 the ALTC Interests

19 By:

20 Its:

Date

21 The above being agreed and consented to, IT IS SO ORDERED

22 this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

23  
24 U.S. Environmental Protection Agency

25 By:

26 Jeff Zelikson, Director  
27 Hazardous Waste Management Division  
28 Region IX

AR. Arthen  
General Manager

10/23/93

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J.H. Baxter Final ACO Part Response Costs

1 IT IS SO AGREED:  
2 J.H. Baxter & Co.,  
3  
4 By: \_\_\_\_\_  
5 Its: \_\_\_\_\_ Date \_\_\_\_\_  
6  
7 International Paper, Inc.  
8  
9 By: \_\_\_\_\_  
10 Its: \_\_\_\_\_ Date \_\_\_\_\_  
11  
12 Roseburg Forest Products, Co.  
13  
14 By: Allyn C. East 9/29/93  
15 Its: V. President Date \_\_\_\_\_  
16  
17 Beazer East, Inc. on behalf of  
18 the ALTC Interests  
19 By: \_\_\_\_\_  
20 Its: \_\_\_\_\_ Date \_\_\_\_\_  
21 The above being agreed and consented to, IT IS SO ORDERED  
22 this \_\_\_\_\_ day of \_\_\_\_\_, 1992.  
23  
24 U.S. Environmental Protection Agency  
25 By: \_\_\_\_\_  
26 Jeff Zelikson, Director  
27 Hazardous Waste Management Division  
28 Region IX

1 IT IS SO AGREED:

2 J.H. Baxter & Co.,

3  
4 By: \_\_\_\_\_

5 Its: \_\_\_\_\_ Date

6  
7 International Paper, Inc.

8  
9 By: \_\_\_\_\_

10 Its: \_\_\_\_\_ Date

11  
12 Roseburg Forest Products, Co.

13  
14 By: \_\_\_\_\_

15 Its: \_\_\_\_\_ Date

16  
17 Beazer East, Inc. on behalf of  
18 the ALTC Interests

19 By:  \_\_\_\_\_

October 8, 1993

20 Its: Richard A. Graham  
Vice President and  
Chief Financial Officer

Date

21 The above being agreed and consented to, IT IS SO ORDERED

22 this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

23  
24 U.S. Environmental Protection Agency

25 By: \_\_\_\_\_

26 Jeff Zelikson, Director  
27 Hazardous Waste Management Division  
28 Region IX

APPENDIX A

	AMOUNT		DATE DUE
FIRST PAYMENT:	\$1,378,607.41		Within 30 Days of Effective Date of this Order
SECOND PAYMENT:	171,057.47	*	April 1, 1994
THIRD PAYMENT:	155,036.22	*	October 1, 1994
FOURTH PAYMENT:	154,803.78	*	April 1, 1995
FIFTH PAYMENT:	155,036.22	*	October 1, 1995
SIXTH PAYMENT:	155,036.22	*	April 1, 1996
SEVENTH PAYMENT:	154,803.78	*	August 1, 1996

\* Plus Interest as set forth in Section 3 of this Order.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Friday, September 24, 1993

MEMORANDUM

SUBJECT: J.H. Baxter Superfund Site - Revised Administrative Consent Order; Final Signature Copy

FROM: Mardi L. Black *Mardi L. Black*  
Assistant Regional Counsel

TO: Steven Goldberg, Esq; Roseburg Forest Products, Co.  
William T. Hassler, Esq; J.H. Baxter & Company  
Ronald C. Hausmann, Esq; Beazer East, Inc.  
R. Raymond Rothman, Esq; International Paper

As I have discussed with each of you in telephone conversations today, enclosed please find a revised Administrative Consent Order (ACO). The revisions may be found on pages 4, 8, and the signature page. The revisions include redefining the entities on behalf of whom Beazer East, Inc. is signing the ACO. This means that a change has been made to the existing definition of "Respondents" and a definition has been added for the "ALTC Interests" (see page 4.) In addition, language has been added to Section 12 which removes contribution protection as between ALCOA, Chicago Bridge & Iron, Co. and Beazer East, Inc. (see page 8.)

These changes have been made since the date of signature by each of your clients. For that reason, please either have your client initial those changes, or re-execute the new signature page which is included. I apologize for any inconvenience. Please call me if you have any comments or questions. I will be in the office through 2:00, Tuesday, September 28, so if you need to, please contact me before then. However, I will be checking voice-mail after that time and you may leave me a message, if necessary.

cc: by facsimile,  
Michael Young, Endispute  
Iryna Kwasny, DOJ  
Bob Brook, DOJ